EASTERN AFRICAN COURT OF APPEAL

The Eastern African Court of Appeal Order in Council, 1950

1950 No. 1968

Made - - - -	*8th December*, 1950
Laid before Parliament	*9th December*, 1950
Coming into Operation—	
Sections 6, 7, 9, 18	
and 19 - - -	*10th December*, 1950
Remainder - -	*1st January*, 1951

At the Court at Buckingham Palace, the 8th day of December, 1950

Present,

The King's Most Excellent Majesty in Council

Whereas it is desirable that the Eastern African Court of Appeal Orders in Council 1921 to 1947(a), should be revoked and replaced by a new Order:

And Whereas it is expedient that fresh provision should be made for the establishment of the Offices of President and Vice-President of the Eastern African Court of Appeal and of Justices of Appeal; and (in order conveniently to secure the application of laws and other enactments relating to pensions and other conditions of service) for the appointment to the service of the Government of Kenya of the said President, Vice-President, and Justices of Appeal and, if necessary, Officers of the Court:

And Whereas it is expedient that the jurisdiction of the said Court should be extended to the Colony of Seychelles, to the Somaliland Protectorate and to the Island of Kamaran in respect of matters arising in the Island in which appeals lie to the Supreme Court of the Colony of Aden:

Now, therefore, His Majesty, by virtue and in exercise of the powers in this behalf by the British Settlement Acts, 1887 and 1945(b), by the Foreign Jurisdiction Act, 1890(c), or otherwise in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order and it is hereby ordered, as follows:—

Short title and commencement.

1.—(1) This Order may be cited as the Eastern African Court of Appeal Order in Council, 1950.

(2) This Order shall come into operation on the first day of January, 1951:

Provided that for the purpose of facilitating the immediate operation of this Order on that date, it shall be lawful for the President, the Vice-President and one or more Justices of Appeal to be appointed at

(a) S.R. & O. 1921 (No. 1210) p. 262, 1923 (No. 970) p. 335, 1947 (No. 1488) I, p. 798, 1947 (No. 2779) I, p. 755.
(b) 50 & 51 Vict. c. 54 and 9 & 10 Geo. 6. c. 7.
(c) 53 & 54 Vict. c. 37.

any time on or after the 10th day of December 1950, and sections 6, 7, 9, 18 and 19 of this Order shall accordingly come into operation on that date, so, however, that any Rule of Court made under the said section 18 shall not come into operation until the first day of January, 1951.

Interpretation.

2.—(1) In this Order, unless the context otherwise requires—

"Aden" means the Colony of Aden;

"the Court" means His Majesty's Court of Appeal for Eastern Africa and includes any division thereof;

"judgment" includes decree, order, conviction, sentence and decision;

"Justice of Appeal" means a Justice of Appeal of the Court;

"Kenya" means the Colony and Protectorate of Kenya;

"the President" means the President of the Court;

"Seychelles" means the Colony of Seychelles;

"Somaliland" means the Somaliland Protectorate;

"Superior Court" means in relation to any Territory, the Supreme Court or the High Court (as the case may be) of the Territory;

"Tanganyika" means the Trust Territory of Tanganyika;

"Territory" means a territory to which this Order applies;

"Uganda" means the Uganda Protectorate;

"the Vice-President" means the Vice-President of the Court;

"Zanzibar" means the Zanzibar Protectorate.

(2) In this Order, unless the context otherwise requires, references to the President, Vice-President, Justices of Appeal or Judges shall be construed as including references to any persons for the time being performing the duties of the Offices in question; and references to the Judges of the Superior Court of any territory shall be construed as including references to the Chief Justice of that territory.

(3) The Interpretation Act, 1889(a), shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

Application of Order.

3. The Territories to which this Order applies are Aden, Kenya, Seychelles, Somaliland, Tanganyika, Uganda and Zanzibar.

His Majesty's Court of Appeal for Eastern Africa to continue.

4. His Majesty's Court of Appeal for Eastern Africa (which was constituted under the Eastern African Court of Appeal Orders in Council, 1921 to 1947) shall continue to be a Court of Appeal for the Courts of Aden, Kenya, Tanganyika, Uganda and Zanzibar, and in addition shall be, and is hereby constituted as, a Court of Appeal for the Courts of Seychelles and Somaliland. The Court shall be a Superior Court of Record.

Seal of Court.

5. The Court shall have and use, as occasion may require, a seal bearing the style of the Court and a device approved by a Secretary of State.

Composition of the Court.

6. The Judges of the Court shall consist of a President, a Vice-President, one or more Justices of Appeal, and the Judges of the Superior Courts of the Territories.

(a) 52 & 53 Vict. c. 63.

Appointment of President, Vice-President, Justices of Appeal.

7.—(1) The President, Vice-President and Justices of Appeal shall be persons qualified for appointment as Judges of the Superior Court of any one of the Territories and shall be appointed by the Governor of Kenya by Letters Patent under the public seal of Kenya in accordance with such instructions as he may receive from His Majesty through a Secretary of State:

Provided that, whenever no such instructions shall be in operation in respect of the Office of Vice-President, that office shall be held by the senior Justice of Appeal for the time being, or by the Justice of Appeal if there be no more than one.

(2) Subject to any instructions which may be given to him by a Secretary of State, the Governor of Kenya may, as occasion may require, by Letters Patent under the public seal of Kenya, appoint any person qualified for appointment as a Judge of the Superior Court of any one of the Territories, to act as President or as Vice-President or as Justice of Appeal and may in like manner terminate any such appointment.

(3) The President, Vice-President and Justices of Appeal shall hold office during His Majesty's pleasure.

(4) Subject to the provisions of Section 9 of this Order, the President, Vice-President and Justices of Appeal shall receive such emoluments as may be determined by a Secretary of State after consultation with the Governors of the Territories; and for the purpose of this subsection the expression "Governors" shall be deemed to include the British Resident for Zanzibar.

Officers of the Court.

8. There shall be such Registrar and other Officers of the Court, appointed in such manner and on such terms, as a Secretary of State may direct.

President, Vice-President and Justices of Appeal to be in service of Kenya Government.

9. The President, Vice-President and Justices of Appeal and any Officers of the Court not otherwise holding office under the Government of any of the Territories, shall be in the service of the Government of Kenya, and accordingly the laws, regulations and other enactments and instruments from time to time in force in Kenya relating to pensions, gratuities and other like benefits, or to terms and conditions of service (including allowances which are not taken into account in computing pensions) shall, save as may be otherwise expressly provided therein and subject to the provisions of Section 19 of this Order, apply in relation to them as if they were Judges or Officers (as the case may be) of the Supreme Court of Kenya, but with such adaptations, modifications and additions as a Secretary of State may from time to time direct.

Precedence of Judges.

10. The President shall take precedence of all other Judges of the Court; the Vice-President shall take precedence immediately after the President; and the seniority of the other Judges shall be determined according to instructions to be given from time to time by a Secretary of State.

Appointment of Assessors.

11. The Court may, in any case in which it appears to the Court to be expedient, call in the aid of one or more assessors with such special qualification as the Court may think fit, and hear such case wholly or in part with the assistance of such assessors. The remuneration, allowances and expenses (if any) to be paid to such assessors shall be determined by the Court.

Court may sit in divisions.

12. The Court may sit in two or more divisions as may be directed by the President, and every Judge of the Court may sit in any division.

Number of Judges

13.—(1) The Court shall be duly constituted if it consists of an uneven number, not being less than three, of the Judges of the Court.

(2) The determination of any question before the Court shall be according to the opinion of the majority of the members of the Court hearing the case.

Powers of Single Judge.

14. A single Judge of the Court may exercise any power vested in the Court not involving the decision of the appeal; but—

(*a*) in criminal matters, if any Judge refuses an application for the exercise of any such power, the person making the application shall be entitled to have his application determined by the Court; and

(*b*) in civil matters any order, direction or decision made or given in pursuance of the powers conferred by this section may be varied, discharged or reversed by the Court.

Judge not to sit on appeal from his own decision.

15. A Judge of the Court shall not sit as a Judge on the hearing of an appeal:—

(*a*) from any judgment given by himself or any judgment given by any Court of which he was sitting as a member;

(*b*) against a conviction or sentence if he was the Judge by or before whom the appellant was convicted.

Jurisdiction of Court.

16.—(1) The Court shall have jurisdiction to hear and determine such appeals from judgments of Courts of the Territories (including reserved questions of law and cases stated) and to exercise such powers and authorities as may be prescribed by or under any law for the time being in force in any of the Territories respectively, subject to the provisions of this Order or of any such law; and, subject as aforesaid, for all purposes of and incidental to the hearing and determination of any appeal within its jurisdiction, the Court shall have the power, authority and jurisdiction vested in the Court from which the appeal is brought.

(2) The process of the Court shall run throughout the Territories and any judgment of the Court shall be executed and enforced in like manner as if it were an original judgment of the Court from which the appeal is brought.

(3) In the hearing of any appeal the law to be applied shall be the law applicable to the case in the Court from which the appeal is brought.

(4) The jurisdiction of the Court in relation to Aden shall extend to the hearing and determination of such appeals from judgments of the Courts of Aden given—

(*a*) in the exercise of their jurisdiction in respect of matters arising in the Aden Protectorate, and

(*b*) in appeals from the Court of Kamaran,

and to the exercise of such powers and authorities, as may be prescribed, in the case of the Aden Protectorate, by Rules or Orders made by the Governor of Aden, and in the case of Kamaran, by any law for the time being in force therein, and, for the purposes of the exercise of jurisdiction under this subsection the provisions of subsection (2) of this section shall have effect as if the word " Territories " therein included

references to the Aden Protectorate or Kamaran, as the case may be, so far as may be necessary or appropriate for or in relation to those purposes.

Sittings of the Court.

17. Subject to any Rules of Court made under this Order,

(1) the dates and times of sittings of the Court shall be determined by the President;

(2) at any sitting, the Court shall be composed of such Judges of the Court as the President may direct; and

(3) the sittings of the Court shall ordinarily be held in Nairobi, but sittings shall be held at other places in the Territories in accordance with such directions as may be given by the President.

Rules of Court.

18.—(1) Subject to the provisions of this Order, the President and any two other Judges of the Court selected by the President, may make Rules of Court for regulating the practice and procedure (including that in any Court from which appeals are brought) in appeals to the Court, whether before or after final judgment in the Court, including the right of audience in the Court and the legal representation of persons concerned, the duties of the Officers of the Court, the costs of, and fees in respect of, proceedings therein and any matters relating to the matters aforesaid.

(2) Rules of Court shall not take effect until they are approved by a Secretary of State, and when so approved shall have effect as if contained in this Order:

Provided that, if it shall be certified in any Rules that it is necessary that they should take effect before such approval can be obtained, such Rules may be made to take effect accordingly; in which case such Rules may be disallowed by a Secretary of State (without prejudice to any thing lawfully done thereunder) but shall continue to have effect unless and until they shall be so disallowed and such disallowance shall be published by the Court.

(3) Except so far as they shall be amended, added to or revoked by Rules of Court made under this Order, all Rules of Court made under the Eastern African Court of Appeal Orders in Council, 1921 to 1947, and in force at the commencement of this Order, shall remain in force, and for the purposes of this Order shall be deemed to have been made under this Order but shall be applied with any adaptations, modifications or additions which the Court or Judge may consider necessary or just in consequence of the provisions of this Order.

Financial Provisions.

19.—(1) To meet the expenses of the Court such sums as may from time to time be determined by or on behalf of the Governments of the Territories shall be paid in the first place from the general revenues of Kenya and such contributions as shall from time to time be determined by the Governments of the Territories with the approval of a Secretary of State shall be paid to the Government of Kenya by the Governments of the other Territories respectively.

(2) For the purposes of the preceding subsection, the expression "the expenses of the Court" shall, without prejudice to its generality, include:—

(*a*) the emoluments, allowances and expenses of the President, Vice-President and Justices of Appeal;

(*b*) any allowances and expenses payable to the Judges of the Superior Courts of the Territories by reason solely of their membership of the Court;

(*c*) any emoluments, allowances and expenses payable to Officers of the Court by reason solely of their employment as such;

(*d*) any remuneration, allowances and expenses payable to assessors;

(*e*) the cost of the provision of premises for the use of the Court and of residences for the President, Vice-President and Justices of Appeal and for Officers of the Court not otherwise holding office under the Government of any of the Territories;

but shall not include any other sums payable by virtue of section 9 of this Order.

(3) Where, by reason of section 9 of this Order, any pension, gratuity or other like benefit or any other sum is payable out of funds of Kenya, the Governments of the other Territories shall pay to the Government of Kenya in respect thereof such contributions as shall from time to time be determined by the Governments of the Territories with the approval of a Secretary of State.

(4) All fees payable in respect of proceedings in the Court shall be paid into the general revenues of the Territory wherein the proceedings giving rise to the Appeal were commenced. In the case of proceedings commenced in Kamaran, such fees shall be paid into the general revenues of Aden.

Revocation.

20. The Eastern African Court of Appeal Order in Council, 1921(**a**), the Eastern African Court of Appeal Order in Council, 1923(**b**), the Eastern African Court of Appeal (Amendment) Order in Council, 1947(**c**), and the Eastern African Court of Appeal (Amendment) (No. 2) Order in Council, 1947(**d**), are hereby revoked.

E. C. E. Leadbitter.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order in Council reconstitutes His Majesty's Court of Appeal for Eastern Africa (which was constituted under the Eastern African Court of Appeal Orders in Council, 1921 to 1947) and makes provision for the appointment of permanent President, Vice-President and Justices of Appeal. The Order extends the jurisdiction of the Court to the Colony of Seychelles, the Somaliland Protectorate and to the Island of Kamaran in respect of matters arising in the Island in which appeals lie to the Courts of the Colony of Aden.

(**a**) S.R. & O. 1921 (No. 1210) p. 262. (**b**) S.R. & O. 1923 (No. 970) p. 335.
(**c**) S.R. & O. 1947 (No. 1488) I, p. 798. (**d**) S.R. & O. 1947 (No. 2779) I, p. 755.